IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12669 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VICE PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12669 of 1994

MR RD RAVAL for Petitioner No. 1

MR ND GOHIL, ASST. GOVERNMENT PLEADER for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 12/10/2004

ORAL JUDGEMENT

In the present petition the petitioner has challenged the action of the respondents in discontinuing to pay the grant to the respondent No.5 under the heading

of expenditure of T.B Risk Allowance paid to the staff. The petitioners have challenged the order dated 29.7.1994, by which the said decision of the Government was communicated.

2. The petition is filed by the Bhavnagar Rashtriya Mazdoor Sangh for and on behalf of employees of the respondent No.5 hospital. It is the case of the petitioner that the staff of the respondent No.5 hospital was getting T.B Risk Allowance since decades and the same was being discontinued on account of the decision of the Government communicated vide order dated 29.7.1994. Accordingly, the Government had discontinued paying grant for the said benefits being paid by the hospital to the staff, and inturn the staff members would be deprived of such payments.

3. It is the case of the petitioner that tuberculosis is a highly contagious disease and on account of the same, the hospital was paying a small T.B. Risk allowance to the staff every month. It is submitted that large number of staff members were actually died suffering from T.B while working for the hospital. It is submitted that the action of the Government is illegal and unlawful.

4. During the pendency of the petition, the High Court had prevented the respondents from seeking recovery pursuant to the said decision.

5. On behalf of the Government, it is sought to be pointed out that though T.B Risk Allowance was an admissible item for payment of grant as per the Circular dated 7.3.1964 as well as as per the latest Circular dated 17th August, 1978, but on account of subsequent Government Resolution dated 17.2.1987, the said benefit came to be withdrawn and the employees were not entitled to receive the same. It is submitted that the Government employees working in similar conditions are not paid this allowance and therefore, staff of the respondent No.5 hospital cannot insist on receiving grant under the said head.

6. Relying on the Government Resolution dated 17.2.1987, it is sought to be suggested that the private hospitals are free to provide for appropriate pay-scale for its staff, however, for the purpose of receiving grant such institutes will be paid grant on the basis of the pay-scale admissible to similar Government servants only.

7. It is not in dispute that since many years the staff of the respondent No.5 hospital was receiving T.B Risk Allowance. It is also not in dispute that for decades together the Government was paying grant to the respondent hospital of the said amount to be paid to the staff by way of T.B Risk Allowance. In the circular of 1964, the said expenditure is held admissible for the grant. In the subsequent Circular dated 17th August, 1978 also T.B Risk Allowance is specifically made admissible for payment of grant by way of special concession to T.B institutions. It is not the case of the Government that the said Circular dated 17th August, 1978 has been withdrawn. What is suggested is that by subsequent circular dated 17.2.1987, certain changes have been made in the earlier Circular dated 17th of August, 1978. From the preamble of the said Circular dated 17th February, 1987, it can be seen that certain changes have been made keeping in mind the representations of the Federation of Charitable Hospitals in the State of Gujarat. In the said Circular it is specifically provided that private institutes are free to engage nursing and other staff and prescribe the pay-scales to be granted to them. However, for the purpose of computation of grant to be paid to such institutes, such pay and allowances if they are higher than the pay-scales admissible to Government servants holding equivalent post, the pay-scales of the Government servants only shall be taken into account.

It is this change introduced pursuant to the Circular dated 17.2.1987 which is sought to be pressed in service by the respondents to contend that since the Government servants working in T.B hospitals are not given T.B Risk Allowances, the respondent No.5 hospital cannot receive grant for the said expenditure even if this allowance is paid to its employees. In my view the said reading of the Government Resolution dated 17.2.1987 is not correct, The condition in question only provides that even in case private hospitals are offering pay and other allowances to its employees higher than the pay-scale available to Government servants holding similar posts, for the purpose of paying grant-in-aid, the pay-scale of the Government servants only shall be taken into account. Neither this condition, nor any other modification introduced by Circular dated 17.2.1987 modifies or in any other manner delets entry No.37 in the Government Resolution dated 17th August, 1978, by which in case of T.B. institutions expenditure on T.B. Risk Allowance paid to the staff is admissible for the purpose of receiving grant-in-aid. Thus, only if after calculating the T.B Risk Allowance the employees end up

receiving pay and allowances all put together higher than the Government servants holding equivalent posts, that the said condition contained in Government Resolution dated 17.2.1987 would come into picture. Without verifying and comparing the pay and allowances received by the employees of the respondent No.5 with those of Government servants holding equivalent posts, it is not possible for the Government to discontinue the T.B. Risk Allowances on the ground that Government servants holding similar posts are not receiving such specific allowance.

8. In the petition, the petitioner has contended that the employees of the respondent No.5 are drawing pay far less than similarly situated Government servants. However, for want of sufficient material it is not possible for this Court to decide the veracity of the statement. Suffice it to say, the correct and conjoint reading of the Circular produced on record would permit the Government to discontinue paying grant to the respondent No.5 hospital under the head of T.B. Risk Allowance, only if the pay and allowances received by the staff of the respondent No.5 hospital exceeds the pay and allowances received by Government servant holding equivalent posts and not otherwise.

9. In the result, the impugned order dated 29.7.1994 is quashed and set aside and the respondents Nos. 1 to 4 are directed to reconsider the issue of release of grant-in-aid in favour of respondent No.5 for its employees under heading of T.B Risk Allowance in light of the findings and observations made hereinabove and communicate the decision taken thereon to the petitioner within a period of 8 weeks from the date of receipt of a copy of this order. If the petitioner wishes to produce any material on record to enable the Government to come to a proper conclusion, the petitioner shall be at liberty to do so.

10. The respondents Nos. 1 to 4 are also directed to take consequential steps pursuant to the decision that may be arrived at.

11. The respondent No.5 hospi8tal has received grant-in-aid under the head of T.B. Risk Allowance for its staff since number of years. The same was continued despite the Circular dated 17.2.1987. It was not the fault of the employees that the said allowance was paid to them. If the Government is permitted to withdraw the same with retrospective effect, the lowly paid employees who are otherwise also exposed to contagious disease of T.B would be required to repay the said amount received

by them many years back. On all these counts and also on account of the fact that the employees had not in any manner even alleged to have made any mis-representation which led to this payment being made to them, it would not be proper or appropriate to permit the Government to withdraw the said benefit with retrospective effect by causing recovery thereof. In the result, at the end of the exercise as directed in this order, even if the Government comes to the conclusion that the respondent No.5 is not entitled to grant for the T.B risk allowance paid to the staff, Government will be precluded from causing any recovery of the amount already paid. In the result, petition is allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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